

CONSOLIDATED SUMMARY JUDGMENT EXHIBITS

EXHIBIT 20

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----X
PAUL IACOVACCI,

4
PLAINTIFF,

5
6 -against-

Case No.:

1:18-cv-08048

7
8 BREVET HOLDINGS, LLC, et al,

9 DEFENDANTS.

-----X

10
11 DATE: October 7, 2021

12 TIME: 11:30 A.M

13
14
15 DEPOSITION of the Defendant,
16 BREVET HOLDINGS, LLC, by DAVID CIBRIAN,
17 taken by the Plaintiff, pursuant to a
18 Court Order and to the Federal Rules of
19 Civil Procedure, held via Veritext Virtual
20 Services, before Edith Tirado-Plaza, a
21 Notary Public of the State of New York.
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A P P E A R A N C E S:

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BY: AVI KUMIN, ESQ.

ALSO PRESENT:

RUHI BEHAL, ESQ. - REED SMITH

MARY BETH GEORGE, ESQ. - REED SMITH

* * *

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1 D. CIBRIAN

2
3 THE VIDEOGRAPHER: Good,
4 morning. We're going on the record
5 at approximately 11:34 a.m. on
6 October 7, 2021. Please silence any
7 cell phones, computers, phones or
8 other electronic devices, audio and
9 video recording. We'll continue to
10 take place unless all parties will
11 agree to go off the record.

12 This is media unit number one
13 of the remote video recorded
14 deposition of David Cibrian taken by
15 counsel for plaintiff in the matter
16 of Paul Iacovacci versus Brevet
17 Holdings LLC filed in the US District
18 Court, Southern District of New York
19 case, case number 1:18-cv-80848.

20 My name is Jim Roberts in
21 association with Veritext New York.
22 I'm the videographer. The court
23 reporter is Edith Plaza, also with
24 Veritext.

25 All counsel consent to this

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D. CIBRIAN

remote video arrangement, waive
objections to this matter of
recording and to the remote swearing
in of the witness.

Counsel, please state their
appearances beginning with noticing
counsel.

MR. FATTARUSO: This is Paul
Fattaruso on behalf of plaintiff Paul
Iacovacci. With me is Mary Beth
George.

THE VIDEOGRAPHER: Opposing
counsel please identify yourselves.

MS. REA: My name is Traci Rea
on behalf of defendants in this
action. With me is my colleague Ruhi
Behal.

THE VIDEOGRAPHER: And counsel
for the witness.

Mr. KUMIN: Good morning, this
is Avi Kumin from Katz, Marshall and
Banks and I represent the deponent
David Cibrian.

THE VIDEOGRAPHER: Court

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D. CIBRIAN

reporter please wear in the witness.

COURT REPORTER: May I get the
witnesses name and address?

THE WITNESS: David Cibrian,

[REDACTED]
[REDACTED]

D A V I D C I B R I A N, called as a
witness, having been first duly sworn by a
Notary Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY

MR. FATTARUSO:

Q. Good morning, Mr. Cibrian.

A. Good morning.

Q. My name Paul Fattaruso. I
represent plaintiff Paul Iacovacci in this
matter.

Have you been deposed before?

A. I have.

Q. Well, I'll try to be brief then
on the ground rules so that we can move
things along.

You understand that you're
under oath and that oath requires you to

1 D. CIBRIAN

2 tell the truth in response to all the
3 questions you will be asked?

4 A. Yes.

5 Q. And are you represented by
6 counsel today?

7 A. I am.

8 Q. Who is that counsel?

9 A. Avi Kumin.

10 Q. During the course of this
11 deposition your counsel may object to any
12 questions, but unless you're instructed not
13 to answer you should go ahead and answer
14 the question anyway; okay?

15 A. Understood.

16 Q. And for the sake of the court
17 reporter we should try to avoid talking
18 over one another so please wait for me to
19 finish the questions and I'll wait for you
20 to finish your answers; okay?

21 A. Okay.

22 Q. If you don't understand a
23 question or need a question repeated please
24 let me know.

25 A. Will do.

1 D. CIBRIAN

2 Q. And we'll plan to take regular
3 breaks during the deposition but if you
4 need a break at any point let me know and
5 we can take a break after you've answered
6 my question or completed a line of
7 questions to accommodate your break needs.
8 Is that okay?

9 A. Of course. Thank you.

10 Q. And is there any reason today
11 that you cannot give truthful and competent
12 testimony?

13 A. No, there's not.

14 Q. You don't have any medications
15 or conditions that may affect your memory?

16 A. No.

17 Q. Is there anyone in the room
18 with you today?

19 A. In this room, no.

20 Q. Do you have any documents
21 related to the case with you?

22 A. No.

23 Q. How did you prepare for today's
24 deposition?

25 A. I reviewed the pleadings. I

1 D. CIBRIAN

2 believe they were the second amended
3 pleadings. I might have that wrong. I
4 reviewed my declaration and a motion to
5 quash this proceeding that was given some
6 time ago and I had a conversation with
7 counsel who is present today.

8 Q. Did you have any conversations
9 with Brevet's counsel?

10 A. No, I have not, not since the
11 motion to quash proceeding of some time
12 ago. That was really the last interaction
13 with Brevet's counsel.

14 Q. Very good. So, let's take a
15 run at the Exhibit Share program if we can.
16 Did you get credentials and were you able
17 to log into the Exhibit Share?

18 A. I believe so. I opened it
19 before I opened this link so let me -- if
20 you permit me unless you want to instruct
21 me otherwise I'll try to go over there.

22 Q. Please do.

23 A. Let's see here. Okay, I'm in.
24 I believe I am seeing a PDF that says
25 Exhibit 1 and it's dated today I believe.

1 D. CIBRIAN

2 Q. That's correct. Can you click
3 on that exhibit? This is a document we've
4 marked as Exhibit 1.

5 A. Okay, I am doing that now.
6 Okay, I see my name and some background
7 material. Is that the document?

8 Q. That's correct. Do you
9 recognize that document?

10 A. Yes, it seems to be a Linked In
11 profile.

12 Q. And to your knowledge, is this
13 Linked In profile accurate?

14 A. Let me scroll down if I could
15 just for a minute. Yes, it seems to be up
16 to date.

17 Q. So, just very briefly to touch
18 on starting at the bottom with educational
19 history, you received a BS from Loyola
20 Marymount University in 1985; is that
21 correct?

22 A. Correct.

23 Q. And a JD with honors from
24 Georgetown University Law Center?

25 A. Yes.

1 D. CIBRIAN

2 Q. And can you walk me through a
3 brief history of your employment prior to
4 joining Brevet?

5 A. So, prior to joining Brevet I
6 had been with a private sector company in
7 the energy efficiency business. They were
8 headquartered in Boca Raton, Florida. I
9 joined that -- it's listed there on my
10 profile as MotorWise Inc. I became
11 acquainted with that company through my
12 corporate law practice. I was with a
13 Dallas based firm working out of the San
14 Antonio office by the name of Strasburger
15 and Price. The investors behind MotorWise
16 were clients of the firm, clients of mine,
17 and I left my longtime corporate law
18 practice to join MotorWise.

19 Q. What was your next position
20 after MotorWise?

21 A. So, my next position which is
22 not listed on here actually because I
23 overlapped with -- you'll see there's a
24 Civitas Capital Group January to December
25 of 2014. Senior advisor there. In

1 D. CIBRIAN

2 addition to that I was -- during that same
3 time period with the law firm by the name
4 Chamberland and Hrdlicka, a Houston based
5 firm. I was also in their San Antonio
6 Texas office and that is where I first
7 started with Brevet Capital.

8 Q. How did you first start to work
9 with Brevet Capital while you were -- was
10 that while you were with Civitas or while
11 you were with the law firm?

12 A. While I was with the law firm.

13 Q. What was your working
14 relationship with Brevet Capital?

15 A. I was an advisor to Brevet. I
16 was doing legal work and also some business
17 element work for them for one of the
18 programs that I eventually ended up leading
19 when I joined Brevet Capital as a full-time
20 employee.

21 Q. And what was that program?

22 A. The first -- it was government
23 financing in general. The first program
24 was related to a federal program that is
25 referred to in the industry as EB-5. EB-5

1 D. CIBRIAN

2 is a visa program of the US federal
3 government.

4 Q. How did you come to join
5 Brevet?

6 A. Doug Monticciolo and Mark
7 Callahan had approached me during the end
8 of this 2014 period and began speaking to
9 me about the possibility that I would join
10 Brevet, you know, as an employee as a
11 partner full-time in the firm. We had
12 several discussions around that. The
13 principle motivator was to come in-house
14 and dedicate my full time and energy to
15 developing, again, what was first the EB-5
16 finances program at Brevet Capital and I
17 believe I joined shortly after the first of
18 the year in 2015, January of 2015.

19 Q. So, what was your title and
20 your role at Brevet when you started?

21 A. Managing director and while my
22 role evolved during the time I was there I
23 really came in on the business development
24 side, [REDACTED]

25 [REDACTED]

1 D. CIBRIAN

2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Again,
3 from a business development standpoint
4 opportunities that could avail themselves
5 of this new program at Brevet Capital.

6 Q. You mentioned that your role
7 evolved over time. How did it evolve?

8 A. Well, you know, [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]. We did
10 identify opportunities that were
11 financeable through the criteria of the
12 Brevet program but then in addition to just
13 sort of bringing in the opportunity, ended
14 up becoming very involved in negotiating
15 with the counter parties, structuring the
16 deal, working with outside counsel to
17 document. So, it went really from sort of
18 business development sourcing to also
19 becoming involved on the investment team
20 and the structuring team.

21 Q. Did you have a role in investor
22 relations in any way?

23 A. No, not really. I was never
24 part of the distribution team as the firm
25 called it or the investor relations team.

1 D. CIBRIAN

2 I would occasionally be in broader meetings
3 where there might be a perspective investor
4 or a consultant but I was not in the IR
5 side of the firm.

6 Q. Was there a different set of
7 practices and a different set of rules that
8 governed the investigator phasing side of
9 the business as opposed to the sort of
10 business development side of the business
11 that you were involved in?

12 A. So, by rules do you mean
13 internal Brevet policies, procedures,
14 rules? Are you talking about rules that
15 govern the firm as a regulated entity?

16 Q. Let's talk about both in that
17 order.

18 A. So, there was clearly a
19 segregation internally between the folks
20 that were on the fundraising investor side
21 and those of us who were on the deal side
22 as would commonly be referred to. So, I
23 was seen as a deal side professional not an
24 investor oriented professional.

25 Q. What was the reason for that

1 D. CIBRIAN

2 internal separation, as best as you
3 understand?

4 A. I think it was just expertise
5 driven. Individuals who had certain --
6 developed certain skill sets over their
7 careers were in a particular role and
8 responsibility at the firm, whether it be,
9 you know, front office, mid office, back
10 office. It was just based on people's
11 previous experience and expertise.

12 Q. What about the second category
13 that you mentioned, differences that were a
14 function of Brevet status as a regulated
15 entity?

16 A. Well, very significant, very
17 complex regulatory frame work. Brevet in
18 the time I was there was always a
19 registered investment advisor regulated by
20 the Securities Exchange Commission and at
21 times by state securities authorities. So,
22 the investor side in particular what was
23 represented, what materials were used, all
24 of that was subject to very strict and very
25 longstanding regulatory rules.

1 D. CIBRIAN

2 Q. When you say it was
3 represented, are you referring to things
4 that were represented to investors or
5 potential investors?

6 A. Yes, as would be the case with
7 any investment advisor -- registered
8 investment advisor.

9 Q. Did that heavily regulated
10 aspect of Brevet's business affect the deal
11 side that you were on to a significant
12 extent or was that an issue that governed
13 the investor relations group?

14 A. Well, certainly the external
15 phasing conversations with investors,
16 either existing or perspective investors,
17 was really run through the investor
18 relations group not through the deal side.
19 We may have occasionally been asked to
20 provide documents or status updates on a
21 transaction, whether in process or closed,
22 but that was really to the extent that
23 those of us, again, on the deal side would
24 interphase internally with the investor
25 relations side.

1 D. CIBRIAN

2 Q. How did you come to leave
3 Brevet?

4 A. So, discussions to leave Brevet
5 started in around August -- July, August of
6 2018. [REDACTED]. I had
7 looked and was working on some other,
8 again, sort of government finance or
9 operating ideas, concepts, opportunities at
10 Brevet but, you know, kind of what I was
11 accomplishing -- how I was accomplishing I
12 felt things had really run its course so
13 began conversations initially with Mark
14 Callahan about finding a way to transition
15 out of the firm and we were able to reach
16 agreement on that at the end of January of
17 2019.

18 Q. While you were at Brevet would
19 you ever go to the Brevet website?

20 A. Yes, I would go there fairly
21 frequently from the standpoint of since I
22 was on the business development side I
23 always had to make sure that we were using
24 the web page to send to business investment
25 opportunity. So, I would get on there,

1 D. CIBRIAN

2 send a link to people, yes.

3 Q. Let's go back over to Exhibit
4 Share and just a minute here. I'm marking
5 what should come up in your folder as
6 Exhibit 2. That should appear if you click
7 the marked exhibits folder and just to
8 refresh.

9 A. Yeah, let me see how I can
10 refresh here. All I'm seeing is Exhibit 1
11 right now.

12 Q. I think if you hover over the
13 folder that says marked exhibits and click
14 it should refresh the contents.

15 A. Yes, you're right. Exhibit 2.
16 Let me open it. Okay I have something up
17 here.

18 Q. Do you recognize this as a
19 representation of Brevet's website around
20 the 2016 time period?

21 A. Yes, it looks about right. I
22 remember the bikers, yes.

23 Q. If you scroll down to page
24 three of the document do you see this is a
25 section that represents the executive team

1 D. CIBRIAN

2 at Brevet?

3 A. Yes.

4 Q. If you look through this
5 executive team, is this consistent with
6 what you generally recall the executive
7 team to have been in the early 2016 time
8 period?

9 A. Yes, correct.

10 Q. And if you scroll further down
11 still to around pages ten and eleven, do
12 you see a section called solutions
13 overview?

14 A. Let me head down. Just from a
15 technology standpoint are you able to see
16 what I'm scrolling or no?

17 Q. I can't see what you're
18 scrolling. I have my own independent
19 version of the document.

20 A. So, what I see is page ten is
21 two people shaking hands. Is that where
22 you'd like me to be?

23 Q. That's right.

24 A. Go ahead.

25 Q. In this section you see there

1 D. CIBRIAN

2 appears to be a brief description at a high
3 level of Brevet's business and I want to
4 ask you a question about the sentence at
5 the end of this section at the top of page
6 11. You see the sentence we seek
7 transactions of 10 to 75 million dollars
8 with the capacity to participate in larger
9 transactions up to 150 million dollars?

10 A. I see it.

11 Q. Is that consistent with your
12 understanding of the transaction size that
13 Brevet was interested in during that time
14 period?

15 A. Yes, it is. From what I recall
16 that's what the firm was targeting as let's
17 say an ideal sized transaction.

18 Q. Are those the sorts of
19 transactions you were looking to source or
20 develop in your business development role?

21 A. Generally, yes. There were a
22 couple of transactions that were closed in
23 my area that were a bit smaller than ten
24 million. There were others that fell right
25 in the 10 to 75 range exactly.

1 D. CIBRIAN

2 Q. In terms of the nature of the
3 transactions, is it right that Brevet was
4 looking for potential lending
5 opportunities?

6 A. Yes.

7 Q. Did Brevet have any interest or
8 any business in making equity investments?

9 A. No, Brevet was a private
10 credit, private debt firm. So, the focus
11 was on debt not really on equity. At least
12 not while I was there from what I remember.

13 Q. I'll try not to talk over your
14 answers going forward.

15 So, while if a business
16 opportunity had come to your attention for
17 say a 150,000 equity investment, would it
18 even cross your mind that was a potential
19 opportunity you would consider developing
20 for Brevet?

21 MS. REA: Objection to form.

22 A. So, your question was 150,000?
23 Did you mean thousand or million?

24 Q. Thousand.

25 A. So, no, I would not have

1 D. CIBRIAN

2 pursued that. I think you also mentioned
3 equity, do I remember that correctly?

4 Q. That's right.

5 A. I would not have pursued it
6 both because of the size and the investment
7 type being equity.

8 Q. Did you work with Mr. Iacovacci
9 in your role as managing director?

10 A. We had interaction, but we were
11 not -- I didn't report to him. He didn't
12 report to me but we did work and
13 collaborate.

14 Q. And were you in different
15 offices as well?

16 A. Well, I was resident in the San
17 Antonio Texas office, but when I was in New
18 York I actually sat -- I had an office but
19 it was a different private office from the
20 one Paul had.

21 Q. And what was the San Antonio
22 office?

23 A. The San Antonio office was
24 myself and eventually grew to be two other
25 employees in San Antonio.

1 D. CIBRIAN

2 Q. Did you have a separate office
3 building there?

4 A. Yes, we were in one of these
5 office share arrangements. It was like a
6 Regis or something to that affect.

7 Q. Did you have office computers
8 in the San Antonio office?

9 A. Yes, we had printers,
10 computers, etcetera.

11 Q. Were those connected to
12 Brevet's network?

13 A. Yes.

14 Q. So, you would boot up the
15 computer and instantly have access to
16 Brevet files without having to go through
17 any further login process to get into the
18 Brevet network; is that an accurate
19 characterization?

20 A. Generally, yes. I'd have to
21 log into my equipment first. There was
22 login credentials and there would be login
23 credentials to get on the let's call it the
24 Brevet server.

25 Q. And do you know if Brevet had

1 D. CIBRIAN

2 access and ability to monitor those
3 computers?

4 A. My understanding is yes. For
5 example, if there was some sort of IT issue
6 or I needed support for something they were
7 able to remote into that company laptop or
8 desktop. I think I had a laptop.

9 Q. And would they need your
10 approval to log into the laptop or desktop
11 or could they just do that as a matter of
12 course?

13 MS. REA: Object to form.

14 A. Whenever I had somebody
15 remotely access the equipment is because I
16 was calling for help, but my assumption is
17 that it was company equipment so, yes, they
18 could access it. They had the ability to
19 access it.

20 Q. Let's take a look at another
21 exhibit. This one should come into your
22 folder as Exhibit 3.

23 A. Okay. Refreshing now.

24 Q. I'll tell you when I think it's
25 in so that I can spare you from the

1 D. CIBRIAN

2 multiple refresh clicks.

3 A. Yeah.

4 Q. Okay, you should have it.

5 A. Work chart?

6 Q. Yes.

7 A. It's opening. I'm on page one.

8 Q. Great. Do you recognize this
9 document?

10 A. I've seen it before, yes.

11 Q. I'll represent to you that the
12 file name for this document has the date
13 March 1, 2016 in the file name to give you
14 a sense of the document's properties.

15 Did you review work charts like
16 this in the course of your work at Brevet?

17 A. Not really in the ordinary
18 course but I would occasionally look at
19 them, for example, if we were preparing
20 some sort of business development
21 presentation or something like that.
22 Sometimes we would look at them, sometimes
23 we would use part of them.

24 Q. So, would these be documents
25 that were kept on the system for access to

1 D. CIBRIAN

2 include in presentations for --

3 A. I don't think it was readily
4 available to just anyone. If I had a need
5 for these even at my level I would usually
6 get it from somebody in the compliance
7 department, for example, or I frankly would
8 go to Doug or Mark and tell them what I
9 needed and we'd figure it out. I don't
10 think I would have just gone into the
11 system and pulled up materials like this.

12 Q. Looking at page two of this
13 chart, that describes the functional
14 organization?

15 A. Right, investment committee is
16 at the top I believe.

17 Q. That's right. Investment
18 committee.

19 Were you aware there was an

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED]

22 A. Yes.

23 Q. Do you know what the role of
24 the investment committee was?

25 A. Yes, the investment committee

1 D. CIBRIAN

2 in an investment firm like Brevet is sort
3 of the principle governing entity. Its
4 mandate normally resolves around making
5 decisions on what opportunities to invest
6 in, what opportunities to fund or not fund.

7 Q. So, in your business
8 development role would you be identifying
9 potential investment opportunities and then
10 presenting those to the investment
11 committee?

12 A. We had an intake committee so
13 an early opportunity would actually be
14 presented to intake. It would be required
15 to present some material, some verbal
16 report on why it was a fit for the
17 investment strategy of Brevet and then it
18 was either approved or rejected at what was
19 called the intake level.

20 Q. Who was on the intake
21 committee, as you recall?

22 A. I'm doing this from memory,
23 but, again, that committee kind of grew and
24 shrank over time. It was definitely Doug
25 and Mark. I don't think Paul was on it. I

1 D. CIBRIAN

2 don't even remember. I couldn't tell you
3 100 percent whether I was on it or not
4 frankly, but I don't think I was as a
5 source person, but it was at least Doug and
6 Mark that were in the intake committee
7 itself.

8 Q. A potential transaction would
9 get to the investment committee only having
10 cleared the intake committee; is that
11 right?

12 A. Correct, correct. It would
13 have to get intake approval and then the
14 team that was staffed on that opportunity
15 which is usually the source and
16 professional so if I had brought it, it
17 would be me. If Peter Sherman had brought
18 it, it would be Peter and then you pull a
19 couple of names from your second box there
20 that you have and then you would get to a
21 letter of intent. That's the point the
22 investment committee would become involved.

23 Q. Did you have familiarity with
24 the organization of the Brevet funds?

25 A. I'm sorry, Paul, I don't fully

1 D. CIBRIAN

2 understand the question. Did I have?

3 Q. Sure, maybe it will make more
4 sense if we take a look at page four of
5 this document which is called a Brevet
6 funds organizational chart.

7 A. Yes, I see it there. Go ahead.

8 Q. Are these charts that you would
9 evaluate in the course of your work?

10 A. No, not really. I may have
11 looked at something like this once or twice
12 just to understand the fund structure, but
13 not anything I would have been involved in
14 really in implementing or looking at
15 regularly. I didn't really have a reason
16 to.

17 Q. Got it.

18 Did you have a high level sense
19 of the fund structure at Brevet?

20 A. Yes.

21 Q. What was your overall high
22 level sense?

23 A. [REDACTED]
24 [REDACTED]
25 [REDACTED]

D. CIBRIAN

[REDACTED]

Q. So, fair to say that when you started the focus of Brevet's business was on the short duration fund?

A. Correct.

Q. Did you understand that the short duration fund had a general partner?

A. Yes.

Q. Were you ever a member of the general partner?

A. No, I was not formally documented to be a member of the general partner. That was the intent and understanding when I joined but we never got to document that.

Q. Was there any informal --

A. I believe there was a reference in my employment letter or offer letter,

1 D. CIBRIAN

2 however we describe it, where there was
3 going to be a share of profits or a share
4 in general partner interests at some
5 percentage.

6 Q. Did you get maybe if you call
7 it a phantom or a simulated general partner
8 profit interest?

9 A. Yeah, that would be a fair way
10 in industry vocabulary to describe it at
11 that point since it never got documented
12 into a direct interest in the GP. You're
13 correct.

14 Q. Was there any point in time
15 when you went through a calculation or
16 received compensation that was in the form
17 of a phantom payment on a general partner
18 interest?

19 A. There were distributions done
20 at the end of the year so, yes, there was a
21 distribution based on whatever my
22 percentage represented.

23 Q. Was the phantom interest
24 documented in any way other than through
25 the documentation reflecting those

1 D. CIBRIAN

2 distributions?

3 A. It was documented in my --
4 again, the joining letter, offer letter. I
5 believe again I'm working from memory so I
6 apologize. I believe at the end of 2015 or
7 -- not at the end. For the year ending
8 2015 and the year ending 2016 I received a
9 K-1 for that, which is a sort of a
10 partnership information return, and then
11 there was a change in how the firm decided
12 to account and structure things so I think
13 for the year ending 2017 and beyond they
14 were really just sort of more like bonus
15 payments so there was no K-1 issue.

16 Q. What's your understanding of
17 the change between 2016 and 2017 in the way
18 that the firm decided to account and
19 structure things?

20 A. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Q. Do you know whether the firm

1 D. CIBRIAN

2 shifted profits away from the general
3 partners of the funds?

4 A. I'm not aware that that
5 happened, no.

6 Q. Do you know how the change in
7 the accounting affected your payments?

8 A. The change affected my having
9 to treat them differently on my personal
10 tax return and I worked with my personal
11 tax advisor to make sure that was done and
12 correct and compliant but I can't tell you
13 exactly kind of what the impact was
14 positive, negative or neutral to me.

15 Q. Did you have a certain
16 identified percentage interest phantom
17 interest in the general partner profits?

18 A. I did. I want to say it was
19 maybe a [REDACTED] [REDACTED] [REDACTED] but, again,
20 if that percentage is correct in my mind
21 it would be in that offer letter.

22 Q. Apart from the change in the
23 [REDACTED] [REDACTED] between 2016 and 2017 there
24 was no change in the percentage of your
25 share of general partner fees that you were

1 D. CIBRIAN

2 participating in; is that right?

3 A. To my understanding, no. The
4 target percentage was supposed to be the
5 same each year.

6 Q. And were you provided any
7 documents accounting for the general
8 partner fees that had been collected for
9 that year to understand what your
10 percentage payment was?

11 A. It was normally an e-mail that
12 the CFO sent during the end of the year
13 that was very brief. It was sort of just a
14 snapshot of sort of numbers what was called
15 I believe the incentive fee total, you
16 know, my percentage and therefore this is
17 the amount you're supposed to get, but it
18 was not anything detailed. It was not my
19 reviewing accounting books and records or a
20 big complex spread sheet. It was really
21 sort of a snapshot this is what we've
22 calculated and this is what you'll be
23 receiving.

24 Q. So, going back to page two of
25 this flow chart in March of 2016. You see

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2 the sourcing group includes yourself, Steve
3 O'Keefe, Paul Iacovacci, Peter Sherman,
4 John Henkel and Michael Aldrich; is that
5 right?

6 A. Correct, I see that.

7 Q. Is that generally consistent
8 with what you understood to be the sourcing
9 group around this period?

10 A. Yes.

11 Q. Let's look at another work
12 chart now from a slightly later date. I'll
13 let you know when it's up.

14 A. Okay.

15 Q. That should be up on Exhibit 4
16 in your folder now. I'll represent this is
17 a document that has the date May 1, 2016 in
18 the title and for the record this is a
19 document beginning bates stamp
20 Brevet-Repro-0068231.

21 A. I'm there. I see it.

22 Q. You see the first page looks
23 basically the same as the page that we saw
24 in the last?

25 A. It seems like it, yes.

1 D. CIBRIAN

2 Q. And then if you scroll down to
3 the sourcing or the Brevet organization
4 page on page two, the sourcing group on
5 this May 1st version of the chart now shows
6 yourself, Steve O'Keefe and Peter Sherman.
7 Do you see that?

8 A. I do.

9 Q. Now, do you recall somewhere
10 around this time period learning that Paul
11 Iacovacci was retiring from Brevet?

12 A. I can't remember exactly the
13 time period but this looks about right but,
14 yes, I knew that he was retiring.

15 Q. Do you recall it being
16 relatively early in 2016 that there was an
17 announcement of his retirement?

18 A. That sounds right, yes.

19 Q. Possibly even before the March
20 document that we looked at?

21 A. I don't know. I really don't
22 know.

23 Q. Do you recall how you learned
24 that Mr. Iacovacci was retiring?

25 A. I first picked up on it

1 D. CIBRIAN

2 verbally while I was in the New York office
3 at one point that Paul was going to be
4 retiring.

5 Q. Was it at a firm meeting?

6 A. No, it may have been just a
7 one-on-one conversation somewhat in
8 passing. I struggle to remember exactly
9 who it was with, but it wasn't -- you know,
10 if by firm meeting you mean people gathered
11 in a conference room being told. That
12 wasn't the first time that I became aware
13 that he was moving on.

14 Q. Did you participate in Monday
15 morning firm wide meetings at Brevet?

16 A. Yes.

17 Q. Would you be in the New York
18 office for those?

19 A. Not always. I would either be
20 patched in by phone or video from
21 elsewhere, San Antonio or I travelled a
22 good bit on firm business but if I was in
23 New York I would be there in person.

24 Q. Do you recall Mr. Iacovacci's
25 retirement being discussed at a Monday

1 D. CIBRIAN

2 morning firm wide meeting?

3 A. I do not.

4 Q. Did you know around that time
5 that Mr. Iacovacci was experiencing health
6 issues?

7 A. Yes, he had been out. He had
8 had some medical procedures, I want to say
9 something orthopedic is what I remember, a
10 knee or something like that but, yes, he
11 was in and out.

12 Q. Did you understand that to be
13 the reason for his planned retirement?

14 A. I did not.

15 Q. Did you have a different
16 understanding as to what the reason for his
17 retirement was?

18 A. I didn't think it was health
19 driven. I thought this just sort of
20 happened at sort of the same time but, you
21 know, just kind of the feel was that, you
22 know, he just was going to move on. That
23 there had been sort of disagreements about
24 the course of sourcing and some other
25 things with others at the firm and when I

1 D. CIBRIAN

2 first heard I heard he was retired.

3 Q. Did there come a point in time
4 when you learned that Brevet had terminated
5 Mr. Iacovacci?

6 A. The first that I may have heard
7 definitively that this would have been a
8 termination was when we were advised there
9 was a lawsuit from Paul against the firm.

10 Q. How did you learn about the
11 lawsuit?

12 A. There was a formal what lawyers
13 refer to I believe as litigation hold
14 e-mail or letter that was sent out to all
15 firm personnel after the lawsuit was filed.

16 Q. Do you recall approximately
17 when you received that litigation hold?

18 A. I do not.

19 Q. That's the first you heard
20 about the dispute between Mr. Iacovacci and
21 the company?

22 A. I believe it's the first I
23 heard that it had become formal litigation.
24 As I alluded to earlier there had been
25 rumblings that the separation had not gone

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2 well, the retirement, however it was
3 phrased, that it had become difficult but I
4 was not aware there was litigation. The
5 best I can remember I wasn't aware there
6 was litigation until the formal kind of
7 notice came out.

8 Q. Did you speak with Mr. Callahan
9 about that?

10 A. Most likely I would have at
11 least once or twice, yes.

12 Q. What did Mr. Callahan tell you?

13 A. Along the lines -- not specific
14 in depth details, but along the lines of
15 what I just relayed. That there were still
16 ongoing discussions. It was difficult. It
17 was dragging on etcetera, etcetera,
18 etcetera. So, something to that affect and
19 it would have been in the context of a
20 broader conversation on other issues.

21 Q. Did you speak to Mr.
22 Monticciolo about Mr. Iacovacci's
23 departure?

24 A. Yeah, I may have spoken to him
25 once or twice, but again just in the

1 D. CIBRIAN

2 context of firm, you know, is Paul coming
3 back, etcetera, things of that nature.

4 Q. Did you use -- I think I know
5 the answer to this question already, but
6 did you use computers or other electronic
7 devises to conduct your work with Brevet?

8 A. Yes.

9 Q. What computers did you use?

10 A. I had a laptop that I received
11 from the firm and that was it. So, it's
12 not like I had machines in different
13 places. It was just a laptop that would
14 travel with me.

15 Q. Was that laptop marked to show
16 that it was a Brevet property?

17 A. I believe it was. I think it
18 had some sort of property tag on the bottom
19 of it, something to that effect.

20 Q. Did you use that computer
21 exclusively for work?

22 A. I mean I may have occasionally
23 used a Brevet Capital e-mail address to do
24 something personal. I may have like
25 entered, you know, a kid's school

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2 commitment on my Brevet calender, things
3 along those lines.

4 Q. Did you have any non Brevet
5 e-mail accounts?

6 A. I did.

7 Q. Would you access non Brevet
8 e-mail accounts from the laptop?

9 A. No, I wouldn't. For that I
10 normally would use my at home desktop
11 machine to access my personal e-mail
12 address or my phone.

13 Q. Did you use your at home
14 desktop to do Brevet work?

15 A. Yes, I did. It was configured
16 by IT to be able to access the Brevet
17 network.

18 Q. Did Brevet have the right to go
19 into that home computer without your
20 permission?

21 MS. REA: Objection to form.

22 MR. KUMIN: Me as well.

23 A. So, no, I was not aware and
24 frankly didn't think about them having
25 access to that home computer. I mean I

1 D. CIBRIAN

2 knew they would have access to Brevet's
3 Outlook on that computer when I accessed
4 it, but did not anticipate they would have
5 access to anything non Brevet on that
6 desktop.

7 Q. By Brevet Outlook, do you mean
8 the Brevet e-mail system?

9 A. Correct.

10 Q. Did Brevet have an employee
11 handbook?

12 A. Yes.

13 Q. Do you know whether the
14 handbook covered computer usage?

15 A. It did.

16 Q. Do you recall the terms of the
17 computer usage?

18 A. Not exactly. There were
19 references to limiting personal use on
20 company equipment I believe. Also there
21 was some discussion about personal devices
22 like cell phones and then that policy
23 during the time I was there it would change
24 as did other policies.

25 Q. This might be a good time. I

1 D. CIBRIAN

2 think we're about an hour and I'm going to
3 be changing topics shortly. It maybe a
4 good time for us to take a quick break if
5 that's convenient for you.

6 A. That would be good. Thank you.

7 THE VIDEOGRAPHER: We're going
8 off the record at 12:24 P M. This is
9 the end of media unit one.

10 (Whereupon, a brief break was
11 taken.)

12 THE VIDEOGRAPHER: We're going
13 back on the record at 12:41. This is
14 the beginning of media unit two. You
15 may proceed.

16 Q. Welcome back, Mr. Cibrian.

17 A. Thank you.

18 Q. While we were on break I marked
19 another exhibit. This is Exhibit 5. You
20 let me know when you have that.

21 A. Okay, it's come up. I'm
22 opening it.

23 Q. So, we were talking -- and for
24 the record this is a document bates
25 labelled P-01-0009976.

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2 We were talking a moment ago
3 about regulatory compliance issues and did
4 I have it right that the regulatory
5 compliance issues centered principally on
6 Brevet's status as a registered investment
7 advisor?

8 A. Yes, that's my understanding.

9 Q. Do you know which Brevet entity
10 had the status of registered investment
11 advisor?

12 A. I believe it was on the work
13 chart that you showed me earlier. I
14 believe it was the Brevet Capital
15 management entity.

16 Q. Now, do you recall when you
17 came on at Brevet who was in charge of
18 regulatory compliance?

19 A. Yes, there was a person by the
20 name of Cherie Harris that was compliance
21 at that time.

22 Q. Looking at this document in
23 front of you, you can flip to the first
24 page of the attachment. Do you recognize
25 this document?

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2 A. I don't recall ever seeing it.
3 Again, intermediate duration was created
4 after I had joined. If you give me a
5 second to scroll through the other pages
6 quickly.

7 Q. Sure.

8 A. There are portions of it in the
9 first few pages that's just general
10 background on Brevet that I recognize some
11 of that from other materials, not
12 necessarily this precise presentation, but
13 I don't recall specifically seeing this
14 intermediate duration fund brochure or
15 whatever it's called.

16 Q. Do you recognize sort of the
17 general category of documents that this
18 falls into? Is this a category of
19 documents that Brevet prepares?

20 A. Yes, I mean marketing materials
21 or decks like this were prepared
22 frequently.

23 Q. Would these be referred to as
24 marketing decks or presenter presentation?
25 Is there a term for this kind of document?

1 D. CIBRIAN

2 A. Yeah, investor presentation
3 would be a subset of marketing decks. For
4 example, there could be a marketing
5 presentation or deck used on the deal
6 sourcing side, the business development
7 side that might not ever be seen by an
8 investor and vice versa.

9 Q. And would marketing decks for
10 the sourcing side differ from marketing
11 decks on the investor side?

12 A. Yes, they generally would.

13 Q. How so?

14 A. The investor deck would tend to
15 focus on fund performance, portfolio
16 construction, diversification within
17 certain regulatory parameters. The
18 investor decks would have things like prior
19 return performance and things of that
20 nature.

21 Q. Can you turn to the back of
22 this document to the disclaimer page?

23 A. Okay.

24 Q. Actually, if you turn one page
25 up before that.

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2 A. Okay.

3 Q. The contact details page, do
4 you see that?

5 A. I'm there now, yes.

6 Q. It's internal page 22 of the
7 power point for the record.

8 Does this contact details page
9 suggest to you that this is an investor
10 phasing presentation?

11 A. It would, yes.

12 Q. Now, were investor phasing
13 marketing decks subject to the regulatory
14 restrictions that Brevet faced as a
15 registered investment advisor in a way that
16 was different from the marketing decks that
17 would be pitched to potential borrowers?

18 A. So, I'm sorry, I almost heard
19 that as a compound question. So, would
20 these investor presentations be subject to
21 the regulatory requirements; was that your
22 question?

23 Q. Yes.

24 A. Yes, it would.

25 Q. Is that also true of the decks

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2 that would go to potential borrowers?

3 A. If they were going only to
4 borrowers it would be less likely that they
5 would be subject to the same side of
6 regulatory scrutiny.

7 Q. And is this page of disclaimers
8 part of the regulatory compliance process
9 for communications that Brevet would send
10 out to investors?

11 A. That is the next page here
12 after the context?

13 Q. Yes, page 23 of the power
14 point.

15 A. So, just looking at it have not
16 read all of the words, but, yes, this would
17 be very standard in an investor phasing
18 presentation to have this type of
19 disclaimer language included.

20 Q. Scrolling up to the
21 organizational chart on page 18 of this
22 deck.

23 A. Okay. This is the one that
24 Doug is listed at the top with an asterisk
25 CIO?

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2 Q. Yes.

3 A. I'm there.

4 Q. Over here in the compliance
5 section I think this is consistent with
6 what you testified to before Cherie Harris
7 is identified as the compliance department
8 for Brevet?

9 A. Yes, that's the person I
10 referenced to.

11 Q. Do you know what Miss Harris's
12 qualifications were to handle regulatory
13 compliance?

14 A. My memory is a little strained.
15 I believe she came from some sort of
16 paralegal background perhaps but that's the
17 extent of what I know.

18 Q. Do you have a sense that her
19 paralegal background qualified her to
20 handle regulatory compliance for Brevet?

21 A. You know, I really wasn't
22 familiar with what she did in the past so I
23 just know that when I arrived that's what
24 her role was, but don't really have much
25 more insight into her background before

1 D. CIBRIAN

2 then.

3 Q. While you were at Brevet, did
4 Brevet do anything to take a closer look at
5 its compliance practices?

6 A. So, Brevet always had outside
7 counsel. They had what was called -- what
8 we called in the industry fund counsel
9 tended to be securities regulatory counsel.
10 I believe that work was done in the time I
11 was there by the Curtis Malette firm.

12 Q. Was Cherie Harris the point
13 person for liaising with Curtis Malette?

14 A. It was a combination of Miss
15 Harris and Doug and Mark primarily at that
16 time.

17 Q. Other than engaging Curtis
18 Malette as counsel, was there anything else
19 that Brevet did during the time you were
20 there to evaluate its regulatory
21 compliance?

22 A. So, at some point I'm saying
23 maybe in the 2017 range general counsel was
24 brought on as a full-time employee. Some
25 time after she joined she added to her

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2 staff. There was another attorney that was
3 brought on to do compliance oriented work
4 and then the firm as is required -- as is
5 custom worked with a fund administration
6 firm that was a third-party firm that did a
7 variety of administrative investor
8 reporting tasks for Brevet in its capacity
9 as registered investment advisor. I think
10 those were the components.

11 Miss Harris when I arrived
12 general counsel then effectively some sort
13 of lawyer reporting to the general counsel
14 and then reliance on outside counsel,
15 reliance on the fund administer as well.

16 Near the end there was an
17 individual that was brought on to help with
18 operational matters. There was some
19 discussions about the fact that he was
20 coming on to serve as the new chef
21 operating officer of the firm. My
22 understanding he was a consultant for a
23 short time and was looking at a variety of
24 things including compliance. So, I think
25 that's all of it.

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2 Q. Starting with the general
3 counsel you mentioned, who was that?

4 A. May Lee DaSilva (phonetic).

5 Q. Do you know when she came on?

6 A. I don't know exactly. That was
7 a sort of 2017 time frame that I was
8 struggling with. Maybe near the end of
9 2017. I'm not sure.

10 Q. Did May Lee DaSilva take over
11 Cherie Harris's role?

12 A. They overlapped for a time and
13 then Miss Harris left the firm. I think it
14 was a few months, maybe less than a year.

15 Q. Was that sort of a transition
16 period to your understanding or was there
17 another circumstance that caused Miss
18 Harris to leave the firm?

19 A. I don't know that --

20 MS. REA: Objection to form.

21 Go ahead.

22 A. I don't know if there was a
23 specific incident or situation but my
24 recollection is that she was asked to leave
25 the firm.

1 D. CIBRIAN

2 Q. Now, you mentioned I think
3 another attorney that Miss DaSilva brought
4 in to handle other issues or other
5 compliance issues?

6 A. Yeah, I think it was mainly
7 compliance issues. I believe his name was
8 Daniel with a B. Maybe Bunge (phonetic) or
9 something like that.

10 Q. Do you know the timing of Mr.
11 Bunge's --

12 A. Not exactly. I would be
13 guessing but it was definitely -- she
14 hired him. She brought him in so it was
15 definitely a good bit after her arrival.

16 Q. And did you have a sense of
17 what Mr. Bunge's responsibilities were?

18 A. It was sort of more of the
19 day-to-day routine compliance policies,
20 procedures, assurance thereto, monitoring,
21 etcetera, and he definitely reported up to
22 DaSilva then.

23 Q. Did you have frequent
24 interaction with compliance in your day to
25 day in your role at Brevet?

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2 A. I would say medium. Again,
3 since I was more on the structuring
4 sourcing underwriting side sort of, you
5 know, occasional, not constant.

6 Q. Now, the fund administrator
7 that you referenced, who was that?

8 A. I think they went through a
9 name change but let's say [REDACTED] [REDACTED] [REDACTED]
10 was the name of the firm or the combined
11 firms.

12 Q. Was the [REDACTED] [REDACTED] [REDACTED] role
13 consistent throughout the time that you
14 were with the firm or did that change over
15 time?

16 A. Yeah, that was -- the bulk of
17 that fell to the accounting financing CFO
18 area. They had more of the day to day but
19 I think it was consistent. I don't recall
20 there sort of being a change in fund
21 administration responsibilities or
22 outsourcing. I think it was consistent.

23 Q. Did the fund administrator have
24 a role or responsibilities in setting
25 practices and procedures for regulatory

1 D. CIBRIAN

2 compliance at Brevet?

3 A. They didn't have a role in
4 setting them, requiring them. They were --
5 you know, they operated within them. They
6 knew generally what was required. So, my
7 understanding is if there was something
8 that they picked up on they would have
9 flagged it, but they were not hired to be
10 responsible for the compliance
11 infrastructure of the firm.

12 Q. Got it. That's helpful.

13 And then I think you mentioned
14 that someone was brought in as a candidate
15 for a new COO --

16 A. Yes.

17 Q. -- at a certain point in time?

18 A. Yes.

19 Q. Do you recall what time frame
20 that was?

21 A. That would have been early
22 2018, so let's say I think he was under a
23 consulting arrangement from January to June
24 2018 I would say.

25 Q. Had somebody exited the role of

1 D. CIBRIAN

2 COO?

3 A. Yes, I believe Jennifer
4 Fleisner (phonetic) had served in the COO
5 role for some time in 2017.

6 Q. And she had left the firm?

7 A. Yes, she had.

8 Q. Do you recall the circumstances
9 of that departure?

10 A. I believe it was her decision.
11 She resigned voluntarily and she went on to
12 pursue other opportunities.

13 Q. And who was the individual who
14 was identified to serve as the new COO?

15 A. Michael Sismansky.

16 Q. I think you said he looked at a
17 variety of compliance issues. What
18 compliance issues specifically do you know
19 Mr. Sismansky looked at?

20 A. I don't know specifically if
21 there was a certain direction or
22 instruction he was given by the firm to
23 look at this versus look at that. It
24 seemed -- again, from what I can gather
25 from the sidelines it was just more of a

1 D. CIBRIAN

2 general take a look, how are we doing, let
3 us know, make recommendations.

4 Q. What did Mr. Sismansky find
5 from his look at the company?

6 A. I don't know. I did not -- I
7 was not part of the group that was working
8 with him. I did talk to him at the request
9 of Doug on several occasions to sort of get
10 him up to speed on my areas of
11 responsibilities and a variety of things
12 but I never saw a report. I was not in a
13 meeting where he reported on or made
14 recommendations as to compliance.

15 Q. Do you know one way or the
16 other whether he did make any
17 recommendations as to compliance?

18 A. I had heard that he had made
19 recommendations because when his consulting
20 assignment wrapped up it may have been in
21 discussions with May Lee or Mark Callahan
22 or both that, you know, he had rendered his
23 report and his consulting engagement had
24 been terminated.

25 Q. Did you have a sense of why his

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2 consulting arrangement had been terminated?

3 A. Did I have a sense?

4 Q. Yes.

5 A. Yes, the sense was that it
6 became a tense and contentious relationship
7 between him and Doug and I believe May Lee
8 during that time period -- that short time
9 period. So, that was the feeling and it
10 was sort of the rumor in the office and in
11 the firm that things had gotten difficult
12 between them during that assignment.

13 Q. Do you have an understanding of
14 why things became difficult?

15 A. Again, this is sort of, you
16 know, hearing through others, but it was
17 that it was a difference of opinion on
18 recommendations and courses of action, but
19 I don't know what exactly those were.
20 Either the recommendations or the courses
21 of actions or differences of opinion.

22 Q. Do you know what aspects of
23 Brevet's business differences of opinion
24 centered on?

25 A. I believe it was what he was

1 D. CIBRIAN

2 asked to look at which was operational and
3 compliance.

4 Q. In terms of operational issues,
5 do you know what operational issues he was
6 asked to look at?

7 A. Not specifically, no.

8 Q. Do you know generally what
9 operational issues he was asked to look at?

10 A. Yeah, I recall that there was
11 some discussion about bringing in -- I may
12 get this wrong, but sort of an outsourced
13 document management service provider and I
14 believe Michael was charged with trying to
15 run that process. That would be, again,
16 kind of the more operational side.

17 Q. What would an outside
18 outsourced document management service
19 provider be designed to do?

20 A. So, generally creating the
21 infrastructure for a firm like Brevet to
22 manage its documents, its materials, where
23 to keep them, where to keep them
24 safeguarded and secure, all of those
25 things.

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2 Q. Do you know whether Mr.
3 Sismansky, Doug and May Lee had differing
4 views on whether to outsource document
5 management?

6 A. I don't.

7 Q. Do you know whether the
8 operational issues related to document
9 management were one of the sources of
10 conflict?

11 A. I don't.

12 Q. On the compliance side, do you
13 have a sense of the issues that Mr.
14 Sismansky was asked to take a look at?

15 A. At Brevet, no, I do not.

16 Q. Do you have any understanding
17 of the topics on which Mr. Sismansky gave
18 recommendations?

19 MS. REA: Objection to form.

20 A. So, not specifically, but you
21 know in part as we were discussing earlier
22 if you're going to look at registered
23 investor's compliance sort of overall
24 comprehensively you spend a good deal of
25 time looking at things like what's in the

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2 offering documents which includes the
3 private placement memorandum. What is in
4 those investor decks like the ones we were
5 talking about earlier. You'd take a look
6 at what you're doing with investor
7 reporting, how are you reporting your past
8 performance as a firm and a fund. So, it's
9 a whole host of compliance oriented matters
10 much of which is, again, investor phasing,
11 what's being communicated to perspective
12 investors or existing investors about the
13 firm and the funds that it manages.

14 Q. Is it your understanding that
15 Mr. Sismansky had concerns about Brevet's
16 practices with respect to offering docs and
17 investor decks and related materials?

18 MS. REA: Object to form.

19 A. So, again, my basis for that
20 there was a difference of opinion is what
21 was going around the firm and the office
22 about interactions between them while he
23 was doing his work. You know, things were
24 relayed in the office, things got heated.
25 There was a loud meeting, so it was the

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2 scuttlebutt, if you will, that things were
3 not going smoothly during that consulting
4 assignment.

5 Q. What did you hear about heated
6 interactions or a loud meeting?

7 A. What did I hear?

8 Q. Yes.

9 A. That there had been
10 disagreements and kind of short tempers.

11 Q. Were those disagreements and
12 short tempers that were witnessed by others
13 in Brevet's office?

14 A. Again, not always being in the
15 New York office I wasn't present for any of
16 those, but what was being discussed is
17 there was behind closed door meetings where
18 you could hear the discussion out in the
19 common area.

20 Q. Do you recall where you heard
21 that?

22 A. No, I don't. Likely it would
23 have been during a visit to New York
24 catching up with people.

25 Q. Do you know how Mr. Sismansky's

1 D. CIBRIAN

2 relationship with Brevet ended?

3 A. I don't other than, again, I
4 picked up from someone and, again, my
5 inclination it was either Mark Callahan or
6 May Lee DaSilva that they had terminated
7 his consulting agreement.

8 Q. Did the termination of his
9 consulting agreement follow shortly after
10 the heated conversations you'd heard about?

11 A. Not necessarily. I think,
12 again, he was there six months and from,
13 again, the sound of it not anything I
14 witnessed per se, there were various kinds
15 of difficult conversations during that
16 period. So, I can't tell you they decided
17 to terminate him in May and terminated him
18 in June and there was a conversation a day
19 before, a week before, a month before, but
20 the sense was he was terminated.

21 Q. We talked or I think you
22 mentioned that there were terms that you
23 were unable to recall about your phantom
24 stock or interest in the general partner
25 but that might have been in your employment

1 D. CIBRIAN

2 letter; is that right?

3 A. Correct.

4 Q. Why don't I mark this for you
5 to have a look at?

6 A. Sure.

7 Q. You should be able to find it
8 as Exhibit 6 in your folder a document with
9 the beginning bates Cibrian 000001.

10 A. Yes, I have it open. It came
11 up.

12 Q. Do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. It is my employment letter
16 between Brevet Holdings and myself.

17 Q. And if you look at paragraph
18 1-C of that letter, is this the provision
19 you were thinking of that refers to your
20 partner participation or profit
21 participation I should say?

22 A. Yes, 1-C, correct.

23 Q. Does this contemplate that your
24 interest would ultimately be through a
25 direct membership interest in one or more

1 D. CIBRIAN

2 of the general partners?

3 A. Yes.

4 Q. Do I understand correctly from
5 what you described before that that direct
6 interest did not come to pass?

7 A. Correct.

8 Q. But you did reach a different
9 arrangement for a phantom interest in the
10 general partner?

11 A. Yes, it was not a new
12 arrangement or a different arrangement. It
13 was in essence the interest in the first
14 sentence where you'll see the word partner
15 in quotation marks.

16 Q. Okay.

17 A. Right, so there's a profit
18 participation given to me as I described
19 earlier at the end of the year through this
20 1-C understanding, but as far as being in
21 the general partner which was the intent
22 and my expectation that as you just
23 described it did not come to pass.

24 Q. And can you point me to
25 anything in the letter that indicates what

1 D. CIBRIAN

2 the percentage interest is?

3 A. Yeah, I'm not seeing it in here
4 so that just maybe may have been agreed to
5 verbally between Doug Monticciolo and
6 myself. I'm scrolling through but if it
7 was it would have been there and I'm not
8 seeing it there.

9 Q. So, that may have been agreed
10 to separately -- your best recollection
11 that was approximately [REDACTED] [REDACTED], do I
12 have that right?

13 A. That's what I recall, yes.

14 Q. Do you recall that being an
15 agreement between you and Doug?

16 A. Correct.

17 Q. Did Mr. Callahan join in that
18 agreement?

19 A. Yes, we had at least one or two
20 conversations leading up to the signing of
21 this letter but Mark would have also been
22 involved in and Mark actually as you can
23 see is the signatory on the letter.

24 Q. Yes.

25 Did Paul Iacovacci join in that

1 D. CIBRIAN

2 agreement, to your knowledge?

3 A. No.

4 Q. Did John Tripp join in that
5 agreement, to your knowledge?

6 A. Not any conversations with me,
7 no.

8 Q. I think I'm getting close to
9 the end of my questions. If we take
10 another break I maybe able to just round up
11 any last questions that I want to ask and
12 we can end your day hopefully earlier with
13 a break by keeping you on the record if
14 that works for you.

15 A. I'm not going to turn down a
16 break or finishing earlier. I vote in
17 favor.

18 THE VIDEOGRAPHER: Off the
19 record at 1:14 p.m.

20 (Whereupon, a brief break was
21 taken.)

22 THE VIDEOGRAPHER: Going back
23 on the record at 1:37 p.m. Okay, you
24 may proceed.

25 Q. Welcome back, Mr. Cibrian.

1 D. CIBRIAN

2 A. Thank you.

3 Q. Couple of questions about the
4 hiring and termination of Mr. Sismansky.
5 Do you know why Mr. Sismansky was being
6 brought on as a potential new COO?

7 A. Well, the position had become
8 vacant when Miss Fleisner had left the firm
9 so it seemed like there was a need for
10 somebody to fill that position. Sismansky
11 was introduced at a meeting -- I want to
12 say he started January of 2018, probably
13 December of 2017 that sort of management
14 meeting that we had he was introduced as he
15 was coming in as an interim COO with the
16 hope of becoming the eventual COO.

17 Q. Did you have an understanding
18 of his qualifications for that position?

19 A. When he was introduced to us at
20 that management meeting management offsite
21 in December Doug had introduced him and
22 talked about how he had been in fund
23 management most of his career. He had
24 served in other C sweet roles in registered
25 investment advisors and fund management

1 D. CIBRIAN

2 firms and that Doug was very excited to
3 have persuaded him to join the firm and
4 help out and come on board.

5 Q. Did you regard him as well
6 qualified for the position?

7 A. Yes, I got to know him during
8 that short time he was there, six, seven
9 months and as I testified earlier Doug had
10 asked me to talk to Mike to make myself
11 available to him, to share information with
12 him. So, I had a little bit of interaction
13 with him during that time period and he
14 very much seemed to know his fund
15 management business.

16 MR. FATTARUSO: That's all the
17 questions I have. Thank you very
18 much for your time.

19 A. Thank you.

20 MS. REA: We have no questions
21 on behalf of Brevet.

22 THE VIDEOGRAPHER: We are
23 completed; correct?

24 MR. FATTARUSO: Yes.

25 THE VIDEOGRAPHER: Stand by.

D. CIBRIAN

We're going off the record at 1:39
p.m. This concludes today's
testimony given by Mr. David Cibrian.
There are two media units. They will
be retained by Veritext.

(Whereupon, at 1:40 P.M., the
Examination of this witness was
concluded.)

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D. CIBRIAN

D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

DAVID CIBRIAN

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

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D. CIBRIAN

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QUESTIONS MARKED FOR RULINGS
PAGE LINE QUESTION
(None)

C E R T I F I C A T E

IN WITNESS WHEREOF, I have hereunto
set my hand this 13th day of October 2021.

Edith Brad-Plezn

EDITH TIRADO-PLAZA

DATE OF DEPOSITION: 10/7/2021
WITNESSES' NAME: David Cibrian

[illegible]

David Cibrian

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20__.

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

[& - approached]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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